IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 219 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DURGASHANKER CHHOTALAL DAVE

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 219 of 2001

MR BC DAVE for Petitioner

MR HL JANI, PUBLIC PROSECUTOR for Respondent No. 1

MR NS SHETH for Respondents No. 2-4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/12/2001

ORAL JUDGEMENT

#. Heard the learned advocates.

#. This Revision Application under Section 397 read with Section 401 CrPC has been preferred against the order dated 18th December, 2000 made by the learned Judicial Magistrate First Class, Himmatnagar below Application Ex.23 in Criminal Case No.2916/99.

#. The petitioner before this Court is the complainant in the above referred Criminal Case No.2916/99. It is the case of the petitioner that on 3rd September, 1999 at around 9:00 a.m. the accused respondents nos.2 to 4 assaulted Vijay, the son of the petitioner, gave him blows with hands and fists. The accused no.1 brought a sword from his shop and hit the said Vijay with sword. The said Vijay received incised wounds on the forearm. Pursuant to the said incidence, the said Vijay was taken to the General Hospital at Himmatnagar, was given treatment by the Medical Officer there and after securing a medical certificate from the hospital a complaint was lodged with the police station. Pursuant to the said complaint, the police has made investigation and a charge-sheet has been submitted in the Court of the Chief Judicial Magistrate, Himmatnagar. In the said charge-sheet, the police has made a report that the accused be charged for offence punishable under Sections 324, 323, 504 and 114 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

#. Feeling aggrieved, the petitioner moved the above referred Application Ex.23 seeking order for further investigation under Section 173(8) CrPC. For according to the petitioner, the accused have committed offence punishable under Section 307 read with Section 120-B of the Indian Penal Code. The said application has been rejected under the impugned order dated 18th December, 2000. Feeling aggrieved, the petitioner - complainant has preferred the present Revision Application.

#. Mr.Dave has strenuously urged that the use of the sword by the accused no.1 and the muscle deep injury received by the said Vijay are sufficient to invoke Section 307 of the Indian Penal Code. He has relied upon the statement given by the said Vijay and has submitted that had the said Vijay not raised his hand for his protection, the sword would have landed on vital part of the body of the said Vijay which could have resulted in his death also. Hence, the intention to commit murder on the part of the accused is prima facie established and the police is require to make investigation accordingly. However, the police has ignored the statement given by the petitioner and the said Vijay and has not made proper investigation. It is, therefore, required that proper

investigation be made keeping in view the gravity of offence committed by the accused. He has further submitted that the intention to commit murder can not be ruled out merely because the sword landed on the hand of the said Vijay sparing the vital organs. He has, therefore, submitted that the police is required to be ordered further investigation under Section 173(8) CrPC.

#. The petition is contested by the learned advocate Mr.N.S.Sheth. He has relied upon the medical certificate issued by the Medical Officer at the General Hospital, Himmatnagar. The Medical Officer has, in his certificate, recorded the history as stated by the injured Vijay, which reads as "assaulted injury by glass by opposite party". Mr.Sheth has submitted that it was the first occasion for the said Vijay to inform the Doctor about his injury. Had the said Vijay received the injuries by sword he would have informed the Doctor accordingly. The use of sword and the injury thereby is an afterthought. The proper investigation has thus been made. No further investigation is required.

#. I have perused the impugned order made by the learned Magistrate and the records produced by the learned advocate Mr.Dave. It does appear that the police, after proper investigation, has made a report to the learned Magistrate with respect to the offence punishable under Sections 324, 323, 504 and 114 of the Indian Penal Code and under Section 135 of the Bombay Police Act. The learned Magistrate has rightly held that no further investigation is required as prayed for.

#. The Revision Application is dismissed. Rule is discharged.

27th December, 2001. (Ms. R.M. Doshit, J.)

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